

**IN THE UNITED STATES DISTRICT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

MICHELLE ROSE	:	CASE NO.
	:	
Plaintiff	:	STATE COURT CASE NO. CV19926895
	:	
	:	JUDGE:
	:	
v.	:	
	:	
	:	
UNIVERSITY HOSPITALS, et al	:	
	:	
Defendants.	:	

DEFENDANTS' NOTICE OF REMOVAL

Pursuant to 28 USC §§ 1331, 1367, 1441, and 1446, Defendants University Hospitals (“UH”) and University Hospitals Physician Services, Inc. (“UHPS”) (UH and UHPS are collectively referred to as “Defendants”) by and through their undersigned counsel, hereby file this Notice of Removal to this Court of an action pending against them in the Cuyahoga County, Ohio Court of Common Pleas. Removal is based on the following grounds:

1. On December 20, 2019 Plaintiff Michelle Rose (“Plaintiff”) commenced an action against Defendants in the Cuyahoga County, Ohio Court of Common Pleas, in a case captioned *Michelle Rose v. University Hospitals, et al.*, Case No. 19-CV-926895 (hereinafter, the “State Court Action”).
2. Attached hereto as Exhibit 1 are true and correct copies of the Complaint, the Docket, and the Summons.
3. All pleadings in the Cuyahoga County lawsuit have been attached to this removal.
4. UH and UHPS consent to this removal.

TIMELY REMOVAL

5. On December 24, 2019, Plaintiff served a Summons and a copy of the Complaint on UH, and on December 26, 2019 Plaintiff served a Summons and a copy of the Complaint on UHPS. A copy of the documents reflecting the date of service are attached hereto as Exhibit 2.

6. Defendants have not yet answered Plaintiff's Complaint. Defendants' will answer the Complaint pursuant to the time period set forth in Rule 81(C)(2) of the Federal Rules of Civil Procedure.

7. This Notice of Removal is being filed within thirty (30) days after Defendants were served with the Summons and Complaint (December 24, 2016 and December 26, 2019) in the State Court Action and, therefore, is timely pursuant to 28 U.S.C. § 1446(b).

JURISDICTION AND VENUE

8. The State Court Action is not a non-removable action as described in 28 U.S.C. § 1445.

9. District courts "have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. The instance in which "a case arises under federal law" is "when federal law creates the cause of action asserted." *Gunn v. Minton*, 133 S. Ct. 1059, 1064 (2013).

10. Plaintiff's Complaint asserts a claim under 28 U.S.C. § 2601, et seq. – the Family And Medical Leave Act ("FMLA").

11. This Court has original jurisdiction over this action pursuant to 28 U.S.C. § 1331 because the Complaint involves and is predicated upon a federal question, Plaintiffs' claim under the FMLA.

12. Plaintiff's Complaint also asserts claims for harassment, retaliation, and a claim pertaining to the termination of her medical insurance following the termination of her employment.¹

13. Where a complaint alleges causes of action under both federal and state law, district courts have supplemental jurisdiction over the state law claims where the state law claims are so related to the federal law claims that they form part of the same case or controversy. *See* 28 U.S.C. § 1367. Federal and state law claims form a part of the same case or controversy when they arise out of a "common nucleus of operative fact." *United Mine Workers of Am. v. Gibbs*, 383 U.S. 715 (1966).

14. Pursuant to 28 U.S.C. § 1367, this Court has supplemental jurisdiction over Plaintiff's state law claims because they arise out of the same set of facts as Plaintiff's federal law claim, specifically, the alleged factual circumstances surrounding Plaintiff's termination.

15. Plaintiff's state law claims do not raise novel or complex issues of state law or substantially predominate over the federal claims. *See* 28 U.S.C. § 1367(c).

16. Accordingly, Defendants are entitled to remove this action to this Court under 28 U.S.C. § 1441 as this Court has original jurisdiction pursuant to 28 U.S.C. § 1331 and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

17. Venue is proper in the United States District Court for the Northern District of Ohio, Eastern Division pursuant to 28 U.S.C. §§ 13940 and 1441(a), because it encompasses the county in which this action is currently pending.

¹ Plaintiff does not identify whether her claims aside from the FMLA claim are under state law or federal law; however, the issue is not dispositive upon this Court's jurisdiction.

NOTICE

18. Pursuant to 28 U.S.C. § 1446(d), promptly upon the filing of this Notice, Defendants will serve written notice of removal to the *pro se* Plaintiff at the address on file with the State Court and Defendant will file a copy of this Notice of Removal with the Clerk of Court for the Cuyahoga County, Ohio Court of Common Pleas. A copy of Defendants' Notice to State Court of Removal of Action to Federal Court is attached hereto as Exhibit 3.

WHEREFORE, Defendants hereby remove this action now pending against them in the Cuyahoga County, Ohio Court of Common Pleas, to this Honorable Court, and requests that this Court retain jurisdiction for all further proceedings.

Respectfully submitted,

/s/ Donald G. Slezak

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January 2020, the foregoing was filed through the Court's CM/ECF electronic filing system. A copy of this filing will be sent via email and regular U.S. mail, postage prepaid, upon Plaintiff at the following address which is listed with the Court:

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